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Non-Resident Capital Gains Tax

Wednesday 26th March 2019

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Welcome & Introduction

Nick Burt
Tax Partner, CMS UK



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Agenda for today

| | |
|-------|--|
| 09.00 | Welcome & Introduction from Nick Burt, CMS UK |
| 09.05 | Presentation from Nick Burt, CMS UK |
| 09.20 | Presentation from Leonie Webster, Deloitte |
| 09.35 | Presentation from John Powlton, M&G Prudential |
| 09.50 | Questions |
| 10.00 | Concluding remarks, Nick Burt, CMS |
| 10.00 | Coffee & Networking |

What we will cover

- The basic non-resident capital gains tax (“NRCGT”) rules
- Collective investment vehicle (“CIV”) regime elections
- Practical considerations for asset managers

Speakers & Panellists



Nick Burt
Tax Partner
CMS CMNO



Wayne Strangwood
Policy & Technical lead
HMRC



Leonie Webster
Partner
Deloitte



John Powlton
Head of Real Estate Tax
M&G Prudential



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Presentation

Nick Burt
Tax Partner, CMS CMNO

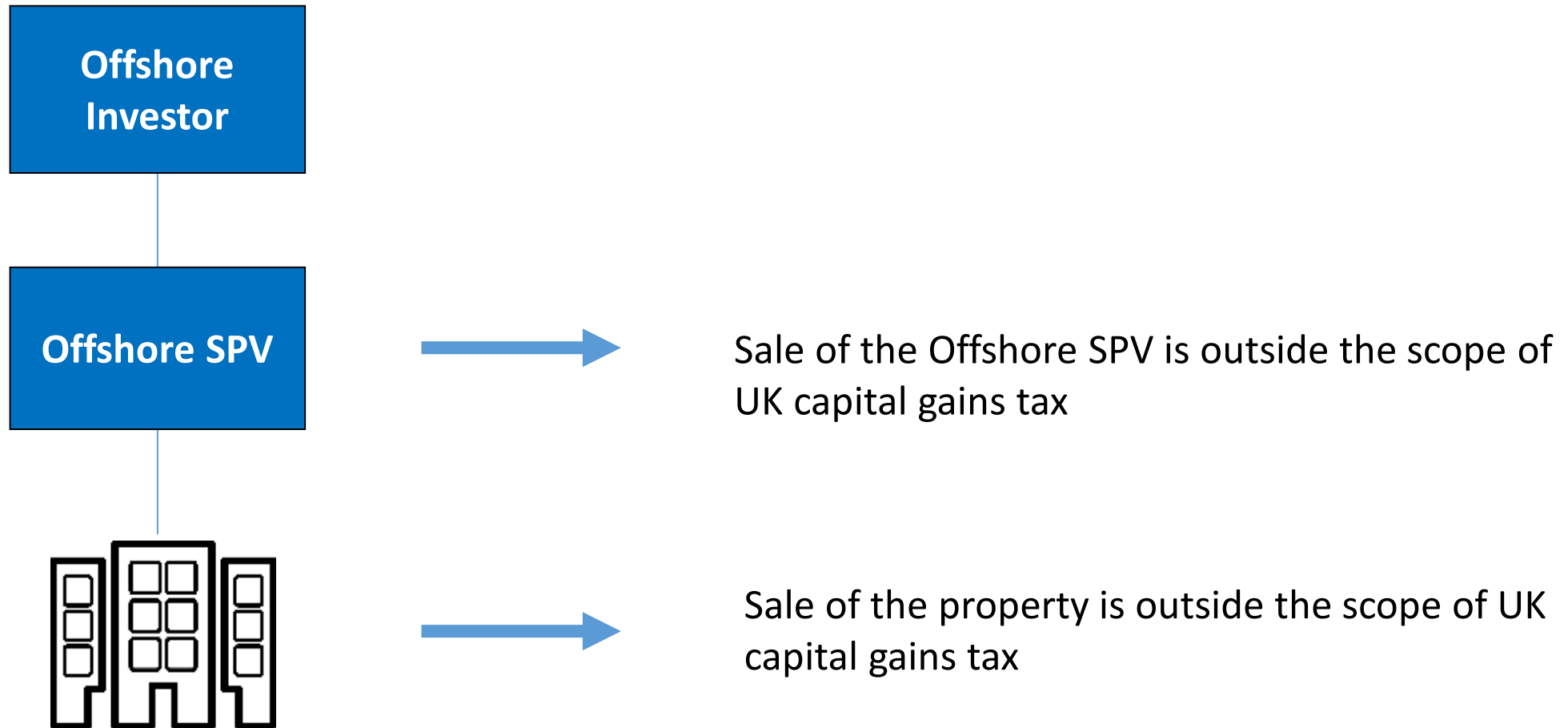


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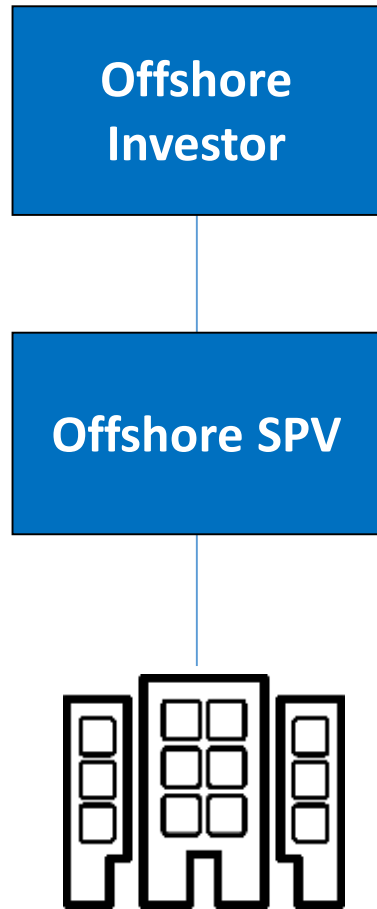
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Current capital gains treatment for non-residents



NRCGT rules from April 2019



Sale of Offshore SPV is an indirect disposal for NRCGT if:

Offshore SPV is a property rich entity;

Offshore Holdco owns $\geq 25\%$ in Offshore SPV; and

There is no treaty protection or tax exemption for the Offshore Investor

Sale of the property is a **direct disposal** for NRCGT

Basic NRCGT charge

$$\text{NRCGT} = (\text{Disposal proceeds} - \text{Base cost}) \times \text{Tax rate}$$

Base cost = Rebased value or acquisition cost
 + Enhancement expenditure
 + Incidental disposal costs

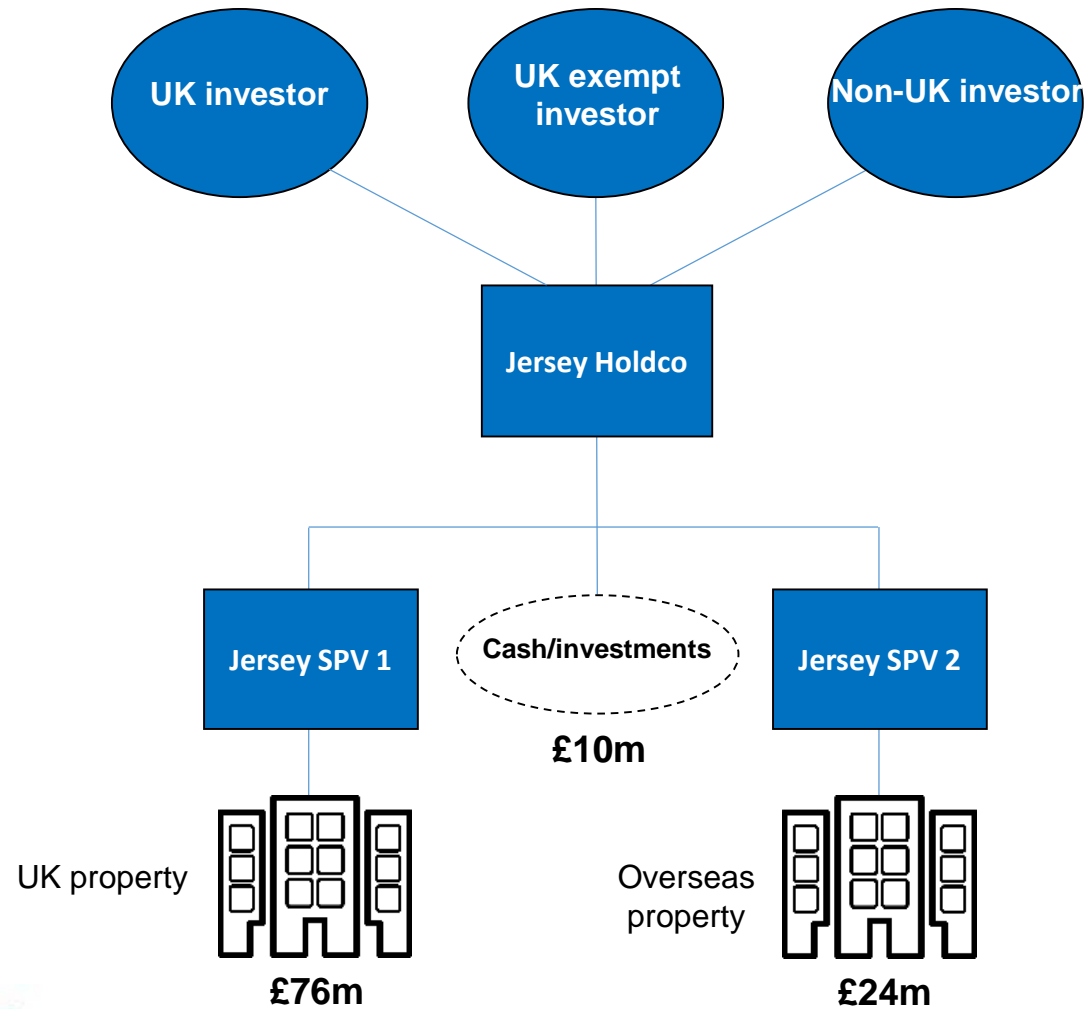
But exemptions could apply for:

- Disposals by tax exempt investors;
- Trading businesses; and
- Substantial shareholding exemption

Indirect disposals

- Disposals of interests in Property Rich Entities (“PREs”)
- An entity is a PRE if $\geq 75\%$ of its gross asset value (“GAV”) derives (directly or indirectly) from UK land at the time of disposal
- Disposals only caught if made by persons:
 - holding $\geq 25\%$ of PRE; or
 - who have during previous two years held $\geq 25\%$ of PRE
- Connected persons are included – to prevent “fragmentation”

Indirect disposals - example



Disposal of Jersey Holdco

- No tax for Non-UK investor as Holdco is not “property rich”
- But to the extent that cash was distributed Holdco could become property rich

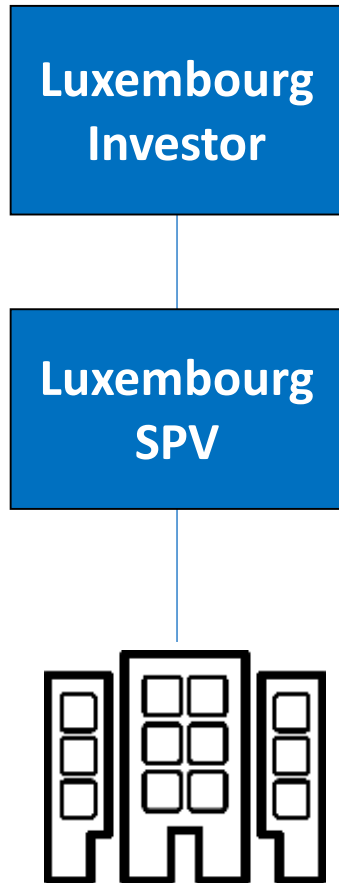
Disposal of Jersey SPV 1

- NRCGT on gain for Jersey Holdco
- Price chip for latent tax in SPV 1?

Disposal of Jersey SPV 2

- No tax for Holdco Jersey as SPV 2 is not UK property rich

Tax Treaties



Indirect disposal not taxable under UK/Luxembourg treaty, but:

Renegotiation; and

Anti-forestalling and TAAR

Direct disposal – no difference as still subject to UK NRCGT



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Presentation

Leonie Webster

Partner at Deloitte



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The CIV provisions: Introduction

- Two new regimes, transparency and exemption
- Conditions must be met
- Moves tax to investors so tax depends on their profile (e.g. exempt/taxable)
- Regimes apply to collective investment vehicles (“CIVs”)
- 25% rule for indirect disposals switched off for CIVs

CIVs

- Collective Investment Schemes (CISs)
- Alternative Investment Funds (AIFs)
- UK REITs
- Non-UK resident company meeting property income condition

The CIV provisions: Transparency regime

Conditions

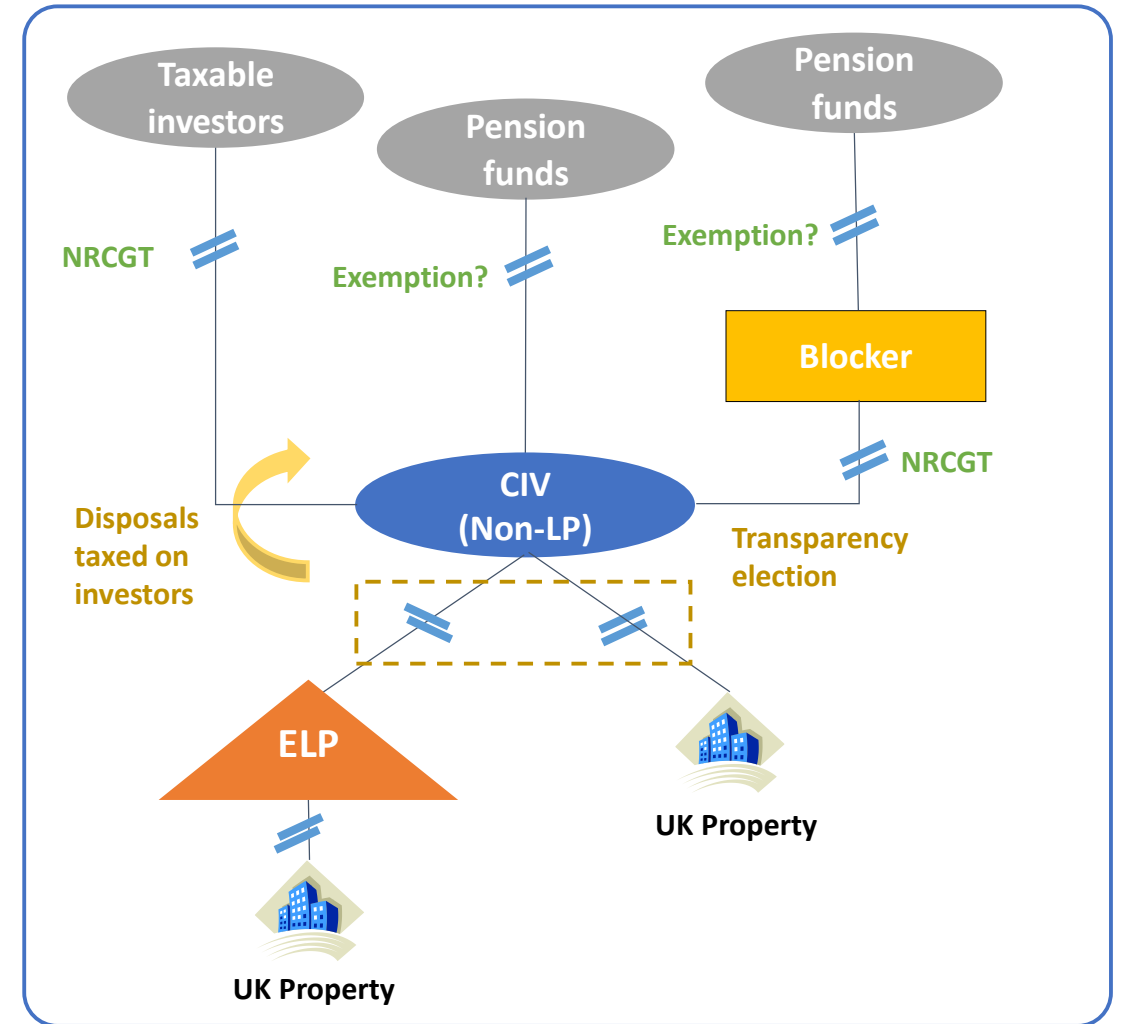
- Offshore CIV (not a partnership)
- UK property-rich
- Income tax transparent
- All investors must consent

Effects

- CIV treated as a transparent partnership (excl. for life business)

Timing

- 12 months to decide 'once and for all'
- Irrevocable



The CIV provisions: Exemption regime

Conditions

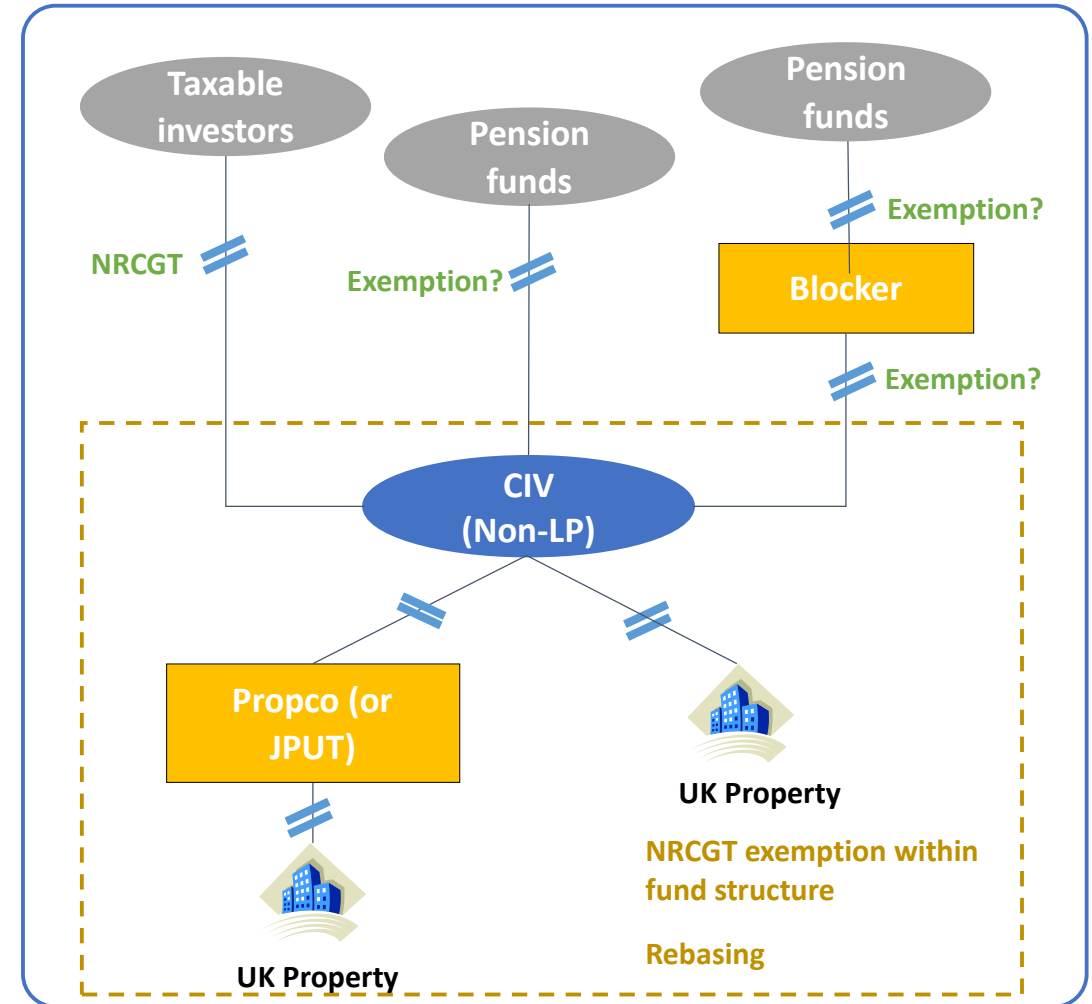
- Offshore CIV, or a company owned by a LP or CoACS
- UK property-rich
- GDO / non-close + other conditions
- Reporting requirements

Effects

- Gains within CIV structure exempt
- NRCGT at investor level
- Reporting/conditions

Timing

- Can back-date 1 year
- Fund manager discretion
- Revocable



Considerations & questions

Considerations

- Impact of status quo
- Options available and restructuring required
- Ability to meet conditions/reporting requirements
- Investor status and communication

Questions

- I have an existing fund but I need to restructure (add/remove entities) to make it suitable for one of the regimes? Can I do this?
- I've read the guidance and I'm not sure I meet the GDO test, how do I get more clarity?
- I've heard that HMRC can revoke my election for certain breaches or to safeguard public revenue. What circumstances could lead to a revocation?
- My fund vehicle/feeder is a CIS (backed by exempt investors) which is not UK real estate rich but invests into UK real estate rich structures – is there anything I can do?



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Presentation

John Powlton

Head of Real Estate Tax at M&G Prudential



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What are you going to do?

Election practicalities

- Conclude on whether to make an election
- Consider investor base, type of fund, assets
- Unanimous consent issues
- Submitting elections – to who?
- Timing: any disposals prior to election?
- Irrevocability of transparency / what happens if exemption election is revoked

Rebasing

- Updating base cost on systems
- Valuation support
- Historical cost comparison?
- Brexit – limitations / caveats – would multiple valuations help?

Are you fit for purpose?

- Governance / restructuring – updating key documents e.g. prospectus?
 - Information disclosure restrictions – investor consent required?
 - Information currently held re: investors – any outstanding information?
 - Sufficient systems for collecting information?
 - Compliance readiness – returns under transparency election / identifying capital returns
- ➡ **Increased compliance and reporting burden – resources, systems, any outsourcing?**

How are you going to do it? Practical challenges?

Gathering existing investor information

- Tax status may be unknown
- Investors may themselves be collectives

Investor communications

- What if investors disagree with decisions?
- Notification of relevant disposals – how to embed this in transaction process?
- Disclosures to HMRC and sharing with investors?

Monitoring qualifying conditions

- Change in investor base?
- Change in asset base?
- Failure to report in full
 - What does “if calculable” mean?
 - What does “reasonable excuse” and “insignificant” mean?

What to do now?

- Start engaging with advisors and service providers (operators, administrators)
- Understand the additional compliance burden
- Review and collect investor information
- Implement new processes – systems and responsibilities



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Q&A



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Concluding remarks

Nick Burt
Tax Partner, CMS UK



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